1032.

SUPREME COURT OF THE UNITED STATES.

No. 175.

BENJAMIN D. HARRIS, PLAINTIFF IN ERROR,

vs.

WILLIAM HARDEMAN, HENRY R. W. HILL, COTESWORTH P. SMITH, AND HENRY A. MOORE.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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GIDEON, print.

BENJAMIN D. HARRIS
vs.
WILLIAM HARDEMAN et al.

Pleas before the honorable Peter V. Daniel and Samuel J. Gholson, judges of the circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and fifty-one.

Be it remembered, that heretofore, to wit, at the May term of said court, A. D. 1850, to wit, on the 15th day of May, 1850, came Wm. Hardeman and H. R. W. Hill, by their attorneys, Miles & Yerger, into said court, and entered the following motion therein, in the words and figures, to wit:

B. D. HARRIS
vs.
WM. HARDEMAN and surety.

Motion to quash the forthcoming bond, and [to] set aside the original judgment in this case, because there was no service of process upon the defendant, Hardeman; the court, therefore, had no jurisdiction, and for other reasons.

WM. R. MILES, and
WM. YERGER.

And afterwards, to wit, at the said May term of the court, first aforesaid, to wit, on the twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-one, came, as well the defendants, by their attorneys, Miles & Yerger, as the said plaintiff, by his attorneys, Anderson, Yerger & Potter; and thereupon the said motion being fully argued and heard, and now understood by the court, it is ordered by the court that the said motion be sustained, the forthcoming bond quashed, and the original judgment herein set aside.

Bill of exceptions tendered by plaintiff.

BENJAMIN D. HARRIS
vs.
WM. HARDEMAN et al.

Be it remembered, that, at the May term, A. D. 1851, of the court aforesaid, came on to be heard, before the honorables Peter V. Daniel and Samuel J. Gholson, judges presiding, the motion of the defendants, William Hardeman and H. R. W. Hill, made in this cause, to quash forthcoming bond, &c.; which said motion is in these words, to wit:

BENJAMIN D. HARRIS
vs.
WILLIAM HARDEMAN et al.

Pleas before the honorable Peter V. Daniel and Samuel J. Gholson, judges of the circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and fifty-one.

Be it remembered, that heretofore, to wit, at the May term of said court, A. D. 1850, to wit, on the 15th day of May, 1850, came Wm. Hardeman and H. R. W. Hill, by their attorneys, Miles & Yerger, into said court, and entered the following motion therein, in the words and figures, to wit:

B. D. HARRIS
vs.
WM. HARDEMAN and surety.

Motion to quash the forthcoming bond, and [to] set aside the original judgment in this case, because there was no service of process upon the defendant, Hardeman; the court, therefore, had no jurisdiction, and for other reasons.

WM. R. MILES, and
WM. YERGER.

And afterwards, to wit, at the said May term of the court, first aforesaid, to wit, on the twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-one, came, as well the defendants, by their attorneys, Miles & Yerger, as the said plaintiff, by his attorneys, Anderson, Yerger & Potter; and thereupon the said motion being fully argued and heard, and now understood by the court, it is ordered by the court that the said motion be sustained, the forthcoming bond quashed, and the original judgment herein set aside.

Bill of exceptions tendered by plaintiff.

BENJAMIN D. HARRIS
vs.
WM. HARDEMAN et al.

Be it remembered, that, at the May term, A. D. 1851, of the court aforesaid, came on to be heard, before the honorables Peter V. Daniel and Samuel J. Gholson, judges presiding, the motion of the defendants, William Hardeman and H. R. W. Hill, made in this cause, to quash forthcoming bond, &c.; which said motion is in these words, to wit:

B. D. HARRIS
vs.
WM. HARDEMAN et al.

Motion to quash the forthcoming bond, and set aside the original judgment in this case, because there was no service of process upon the defendant, Hardeman; and the court, therefore, had no jurisdiction, and for other reasons.

W. R. MILES, and
WM. YERGER.

Which said forthcoming bond, in said motion referred to, was executed by the said Hardeman & Hill, and is in the words and figures following, to wit:

Know all men by these presents, that we, Cotesworth P. Smith, Henry A. Moore, and William Hardeman, and H. R. W. Hill, citizens of the State of Mississippi and Louisiana, are held and firmly bound unto Benjamin D. Harris in the just and full sum of six thousand five hundred and thirty-six dollars and fifty-seven $\frac{1}{4}$ cents, lawful money of the United States, to be paid to the said Benjamin D. Harris, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 20th day of April, eighteen hundred and forty.

The condition of this obligation is such, that whereas the said Benjamin D. Harris hath sued out of the circuit court of the United States, for the southern district of Mississippi, a writ of fieri facias, against the goods and chattels, lands and tenements, of the above bound, for the sum of thirty-six hundred and forty-two $\frac{6}{100}$ dollars and twenty-six cents, with interest thereon from the 16th day of May, eighteen hundred and thirty-nine, on said sum, at the rate of 8 per centum per annum until paid; and the further sum of one hundred and twenty-six $\frac{3}{100}$ dollars and cents for costs incurred thereon; which writ of fieri facias has been levied by the marshal of said district upon the following described property, viz: negro slaves, to wit, Ben, Nelson, Richmond, Richard, Gabriel, Nelson, and Peter, the property of said William Hardeman; which said property is suffered to remain in possession of the above bound Hardeman, upon his executing this bond, with the above named H. R. W. Hill, sureties therein; and the said defendant and sureties agree, that said property shall be delivered and sold in the city of Jackson, at the front door of the State-house.

Now, if the above bound defendant do, and shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State-house, in the city of Jackson, on the 4th day of May next ensuing, by twelve o'clock, noon, of that day, to be disposed of according to law in discharge of the aforesaid

writ of fieri facias, then, and in that case, the above obligation to be null and void, otherwise to remain in full force and virtue.

WILL. HARDEMAN, [L. S.]
H. R. W. HILL. [L. S.]

And which said bond was executed upon process of execution, issued in the cause in which said original judgment, in said motion referred to, was rendered; a full and perfect transcript of the record, process, proceedings, returns, &c., in said cause, in which said judgment was rendered, is in the words and figures following, to wit:

BENJAMIN D. HARRIS
vs.
C. P. SMITH et al.

Pleas before the honorable John McKinley and Samuel J. Gholson, judges of the circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, at a court held at Jackson, at the May term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and thirty-nine, came Benjamin D. Harris, by Kennedy & Walker, his attorneys, into the clerk's office of the court aforesaid, and sued out the following summons ad respondendum against Cotesworth P. Smith et al., to wit:

UNITED STATES, *District of Mississippi, ss.*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Cotesworth P. Smith, Henry A. Moore, and William Hardeman, citizens of the State of Mississippi, that they be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Benjamin D. Harris, a citizen of the State of Alabama, of a plea of trespass on the case to his damage five thousand dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the first day of March, A. D. 1839, and of the independence of the United States the 63d.

[L. S.]

WM. BURNS, *Clerk.*

Marshal's return.

Executed on the defendant, Hardeman, by leaving a true copy at his residence.

W. M. GWIN, *Marshal,*
Per deputy W. B. NORMENT.

Executed personally on C. P. Smith, and gave a copy, April 9th, 1839.

Executed on H. A. Moore, by leaving a copy on the table at his residence, his wife nor no white person at home, April 9th, 1839.

WM. M. GWIN, *Marshal.*
R. H. BELL, *Deputy.*

And on the same day of suing out the writ aforesaid, the plaintiff, by his attorney, filed his declaration herein; which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, May term, 1839.

Benjamin D. Harris, who is a citizen of the State of Alabama, by attorney, complains of Cotesworth P. Smith, Henry A. Moore, and William Hardeman, citizens of the State of Mississippi and the district aforesaid, in custody, and of a plea of trespass on the case upon premises. For that whereas the said defendants, by the names and signatures of C. P. Smith, H. A. Moore, by C. P. Smith, attorney, and Will. Hardeman, heretofore, to wit, on the 20th day of January, in the year of our Lord one thousand eight hundred [and] thirty-eight, at Canton, to wit, in the district aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay, on the first day of January next, after the date of said promissory note, to the said Benjamin D. Harris or order, the sum of three thousand two hundred and ninety-three dollars and ninety cents, for value received, with interest from the date of said promissory note, negotiable and payable at the Planter's Bank, Natchez, Mississippi; by means whereof the said defendants then and there became liable to pay the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of said note; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said note specified, according to the tenor and effect thereof. Yet the said defendants, not regarding their said promise and undertaking, have not as yet paid the said plaintiff the said sum of money, or any part thereof, although often requested so to do; but to pay the same, or any part thereof, to the said plaintiff, the said defendants have hitherto wholly failed and refused, and still do refuse so to do, to the damage of the said plaintiff of five thousand dollars; and therefore he brings his suit, &c.

KENNEDY & WALKER,
Plaintiffs' attorneys.

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, came the plaintiff aforesaid, by his said attorneys, and it appearing to the satisfaction of the court that [the] writ aforesaid has been duly executed, and the defendants failing to appear, though solemnly called, it is therefore considered by the court that the said plaintiff recover against the said defendants the sum of three thousand six hundred and forty-two dollars and twenty-six cents, for his damages which he has sustained by reason of the premises, and also his costs and charges by him about his suit in this behalf expended. And the said defendants in mercy, &c.

And afterwards, to wit, on the 20th day of June, A. D. 1839, the following execution of fieri facias, issued by virtue of the foregoing judgment out of the clerk's office of the court aforesaid, in the words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi, sct.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of Cotesworth P. Smith, Henry A. Moore, and William Hardeman, late of your district, you cause to be made the sum of three thousand six hundred and forty-two $\frac{26}{100}$ dollars, which Benjamin D. Harris, lately in our circuit court for the district aforesaid, has recovered against them, for his damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendants to the said Benjamin D. Harris lately made, with interest on the said sum at 8 per centum per annum, from the 16th day of May, 1839, until paid; also the sum of forty-three $\frac{50}{100}$ dollars, for costs by him about his suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court on the first Monday of November next, to render unto the said plaintiff, for his damages and costs aforesaid; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] May, A. D. one thousand eight hundred and thirty-nine, and in the 63d year of the independence of the United States of America.

Issued the 20th day of June, 1839.

WM. BURNS, *Clerk.*

Marshal's return.

Levied this execution on a tract of land lying in Adams county, bounded as follows, lying between the Old and Mississippi rivers; on the west by Mississippi river, on the east by Old river, and a part of the

lands of Paul Pannally, and on the north by said Pannally and lands belonging to Weems, containing twenty-two hundred acres, more or less, and not sold for want of time.

WM. M. GWIN, *Marshal.*
R. H. BELL, *Deputy.*

October 22, 1839.

And afterwards, to wit, on the 2d day of December, A. D. 1839, the following execution of venditioni exponas issued out of the clerk's office of the court aforesaid, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, that you expose to sale those goods and chattels, lands and tenements, of Cotesworth P. Smith, Henry A. Moore, and William Hardeman, to wit, a tract of land, lying in Adams county, bounded as follows, lying between the Old and Mississippi rivers; on the west by Mississippi, on the east by Old river, and a part of the lands of Paul Pannally, and on the north by said Pannally and lands belonging to Weems, containing twenty-two hundred acres, more or less, which, according to our command, you have taken, and which remains in your hands unsold, as you have certified to the judges of our circuit court, for the southern district of Mississippi, to satisfy Benjamin D. Harris the sum of three thousand six hundred and forty-two $\frac{26}{100}$ dollars, with interest on the same at the rate of 8 per centum per annum, from the sixteenth day of May, 1839, until paid, and the sum of one hundred dollars 19$\frac{1}{2}$-100, for costs and charges by him in that behalf expended, whereof the said Benjamin D. Harris hath recovered execution against the said Smith, Moore, and Hardeman, by virtue of a certain judgment in our said circuit court; and that you have the said moneys before the judges of our circuit court, at a court to be held at Jackson, in and for the district aforesaid, on the first Monday of May next, to render to the said Benjamin D. Harris; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in [L. S.] November, A. D. one thousand eight hundred and thirty-nine, and in [the] 64th year of the independence of the United States.

Issued the 2d day of December, 1839.

WM. BURNS, *Clerk.*

Marshal's return.

The within described land, after having been duly advertised, was

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sold at the court-house in the city of Natchez, on Monday, the second day of March, 1840, to the president, directors, and company of the Planters' Bank of the State of Mississippi for the sum of fifty dollars, they being the highest, best, and last bidder.

WM. M. GWIN, *Marshal*.
Per ANS. LYNCH, *Deputy*.

And afterwards, to wit, on the 7th day of March, A. D. 1840, the following execution of alias fieri facias, issued out of the clerk's office of the court aforesaid, in words and figures, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Mississippi, sct.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you as before, &c., that of the goods and chattels, lands and tenements, of Cotesworth P. Smith, Henry A. Moore, and William Hardeman, late of your district, you cause to be made the sum of thirty-six hundred and forty-two $\frac{2}{100}$ dollars, which Benjamin D. Harris lately, in our circuit court for the district aforesaid, has recovered against them for his damages, which he has sustained by reason of the non-performance of a certain promise and assumption by the said Smith, Moore, and Hardeman to the said B. D. Harris, lately made, with interest on the said sum at 8 per centum per annum from the 16th day of May, 1839, until paid; also the sum of one hundred and twenty-six dollars $2\frac{3}{3}$-100 cts., for costs by him about his suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court on the first Monday of May next, to render unto the said plaintiff for his damages and costs aforesaid; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Mon-
[L. S.] day of November, A. D. one thousand eight hundred and thirty-nine, and in the 64th year of the independence of the United States of America.

Issued the 7th day of March, 1840.

WM. BURNS, *Clerk*.

Endorsement.

This execution is entitled to a credit of $50, to be applied to costs in this case, made 2d March, 1840. See vend. exps. to May 1840, No. 68.

WM. BURNS, *Clerk*.

Marshal's return.

Levied this execution 20th April, 1840, on the following property, viz., Ben Nelson, Richmond, Richa, Gamal, Nelson, and Peter, negro

slaves. Took a forthcoming bond for their delivery at the door of the State-house, in the city of Jackson, on the 4th May, 1840, with H. R. W. Hill surety; which property not being delivered according to the stipulation of said bond, it is herewith returned forfeited. May 4, 1840.

WM. M. GWIN, *Marshal,*
Pr. deputy JNO. F. COOK.

Forthcoming bond.

Know all men by these presents, that we, Cotesworth P. Smith, Henry A. Moore, and William Hardeman and H. R. W. Hill, citizens of the State of Mississippi and Louisiana, are held and firmly bound unto Benjamin D. Harris in the just and full sum of six thousand five hundred and thirty-six dollars and fifty-seven and a quarter cents, lawful money of the United States, to be paid to the said Benjamin D. Harris, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 20th day of April, eighteen hundred and forty.

The condition of this obligation is such, that whereas the said Benj. D. Harris hath sued out of the circuit court of the United States, for the southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements, of the above bound for the sum of thirty-six hundred and forty-two $\frac{25}{100}$ dollars and twenty-six cents, with interest thereon from the 16th day of May, eighteen hundred and thirty-nine, on said sum at the rate of 8 per centum per annum until paid, and the further sum of one hundred and twenty-six $\frac{25}{100}$ dollars cents for costs incurred thereon; which writ of fieri facias has been levied by the marshal of said district upon the following described property, viz., negro slaves, to wit, Ben Nelson, Richmond, Reha, Gabriel, Nelson, and Peter, the property of said William Hardeman; which said property is suffered to remain in possession of the above bound Hardeman, upon his executing this bond with the above named H. R. W. Hill, sureties therein; and the said defendant and sureties agree that said property shall be delivered and sold in the city of Jackson, at the front door of the State-house.

Now, if the above bound defendant do, and shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State-house, in the city of Jackson, on the 4th day of May next ensuing, by twelve o'clock noon of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then, and in that case, the above obligation to be null and void; otherwise to remain in full force and virtue.

WILL. HARDEMAN. [SEAL.]
H. R. W. HILL. [SEAL.]

And afterwards, to wit, on the 11th day of June, A. D. 1840, the following execution of fieri facias, issued out of the clerk's office of the court aforesaid, as well against the said surety to the forfeited forthcoming bond aforesaid as against the defendant to said original execution, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States, for said district, Benjamin D. Harris recovered judgment against Cotesworth P. Smith, Henry A. Moore, and William Hardeman, for the sum of thirty-six hundred and fifty-two $\frac{26}{100}$ dollars, with interest thereon at the rate of 8 per centum per annum, from the 16th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiff in and about his said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record. And whereas, on the 7th day of March, 1840, an execution of alias fieri facias, issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid, which execution was levied on certain property of said defendants, which said property was suffered to remain in possession of said defendant upon executing a forthcoming bond, according to law, with H. R. W. Hill as security; which said bond was returned to our said court at the May term thereof, A. D. 1840, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendants to said original execution for said debt, interest, and costs.

Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of the said William Hardeman and H. R. W. Hill, late of your district, you cause to be made the amount of the said judgment, interest, and costs, so recovered as aforesaid; also the sum of one hundred and seventy-six $\frac{53}{100}$ dollars, including the costs accrued since the emanation of said execution, and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of November next, to render to said plaintiff; and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] May, A. D. 1840, and in the 64th year of the independence of the United States.

Issued the 11th day of June, 1840.

WM. BURNS, *Clerk*,
Per SAM. LAUGHMAN, *D. C.*

(Endorsement.) No security of any kind is to be taken.
WM. BURNS, *Clerk*.

slaves. Took a forthcoming bond for their delivery at the door of the State-house, in the city of Jackson, on the 4th May, 1840, with H. R. W. Hill surety; which property not being delivered according to the stipulation of said bond, it is herewith returned forfeited. May 4, 1840.

WM. M. GWIN, *Marshal,*
Pr. deputy JNO. F. COOK.

Forthcoming bond.

Know all men by these presents, that we, Cotesworth P. Smith, Henry A. Moore, and William Hardeman and H. R. W. Hill, citizens of the State of Mississippi and Louisiana, are held and firmly bound unto Benjamin D. Harris in the just and full sum of six thousand five hundred and thirty-six dollars and fifty-seven and a quarter cents, lawful money of the United States, to be paid to the said Benjamin D. Harris, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 20th day of April, eighteen hundred and forty.

The condition of this obligation is such, that whereas the said Benj. D. Harris hath sued out of the circuit court of the United States, for the southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements, of the above bound for the sum of thirty-six hundred and forty-two $\frac{25}{100}$ dollars and twenty-six cents, with interest thereon from the 16th day of May, eighteen hundred and thirty-nine, on said sum at the rate of 8 per centum per annum until paid, and the further sum of one hundred and twenty-six $\frac{25}{100}$ dollars cents for costs incurred thereon; which writ of fieri facias has been levied by the marshal of said district upon the following described property, viz., negro slaves, to wit, Ben Nelson, Richmond, Reha, Gabriel, Nelson, and Peter, the property of said William Hardeman; which said property is suffered to remain in possession of the above bound Hardeman, upon his executing this bond with the above named H. R. W. Hill, sureties therein; and the said defendant and sureties agree that said property shall be delivered and sold in the city of Jackson, at the front door of the State-house.

Now, if the above bound defendant do, and shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State-house, in the city of Jackson, on the 4th day of May next ensuing, by twelve o'clock noon of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then, and in that case, the above obligation to be null and void; otherwise to remain in full force and virtue.

WILL. HARDEMAN. [SEAL.]
H. R. W. HILL. [SEAL.]

And afterwards, to wit, on the 11th day of June, A. D. 1840, the following execution of fieri facias, issued out of the clerk's office of the court aforesaid, as well against the said surety to the forfeited forthcoming bond aforesaid as against the defendant to said original execution, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

Whereas, at the May term, 1839, of the circuit court of the United States, for said district, Benjamin D. Harris recovered judgment against Cotesworth P. Smith, Henry A. Moore, and William Hardeman, for the sum of thirty-six hundred and fifty-two $\frac{26}{100}$ dollars, with interest thereon at the rate of 8 per centum per annum, from the 16th day of May, A. D. 1839, until paid, together with costs and charges by said plaintiff in and about his said suit in that behalf expended, whereof the said defendants were convicted, as appears to us of record. And whereas, on the 7th day of March, 1840, an execution of alias fieri facias, issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid, which execution was levied on certain property of said defendants, which said property was suffered to remain in possession of said defendant upon executing a forthcoming bond, according to law, with H. R. W. Hill as security; which said bond was returned to our said court at the May term thereof, A. D. 1840, by the marshal aforesaid, "forfeited," and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendants to said original execution for said debt, interest, and costs.

Now, therefore, you are hereby commanded, that of the goods and chattels, lands and tenements, of the said William Hardeman and H. R. W. Hill, late of your district, you cause to be made the amount of the said judgment, interest, and costs, so recovered as aforesaid; also the sum of one hundred and seventy-six $\frac{53}{100}$ dollars, including the costs accrued since the emanation of said execution, and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of November next, to render to said plaintiff; and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of [L. S.] May, A. D. 1840, and in the 64th year of the independence of the United States.

Issued the 11th day of June, 1840.

WM. BURNS, *Clerk*,
Per SAM. LAUGHMAN, *D. C.*

(Endorsement.) No security of any kind is to be taken.
WM. BURNS, *Clerk*.

This execution is entitled to a credit of $50, to be applied to costs in this case made 2d March, 1840; see vend. exponas to May, 1840, No. 68. WM. BURNS, *Clerk.*

(*Marshal's return.*)

Stayed until further orders by order of plaintiff's attorney filed herein *filed.*

W. M. GWIN, *Marshal,*
By W. L. BATTE, *Deputy.*

(*Plaintiff's attorney's order.*)

The marshal may delay proceeding against Wm. Hardeman until further orders.

PRYOR LEA,
Attorney for plaintiff.

8th October, 1840.

And upon the trial of the said motion a rule of the said circuit court of the United States, for the southern district of Mississippi, adopted on the 18th day of June, in the year 1838, by the said court, the hon. George Adams, district judge in said court at the time of the adoption of said rule, solely presiding, was read on behalf of said Harris, and relied on to show the sufficiency of the service of the original process in said cause on said Hardeman, which said rule as entered on the minutes of said court is in the words following, to wit:

"It is ordered by the court, that the following rule be adopted in addition as the rules of this court, to wit:

"The capias ad respondendum shall be served by arresting the defendant unless bail be waived; or when bail be waived, or a summons shall issue, the same shall be served personally, or if the defendant be not found, by leaving a copy thereof at his or her residence or usual place of abode at least twenty days before the return day thereof, to entitle the plaintiff to a trial or judgment by default at the return term."

Which said rule of court was and continued to be in full force and effect, if the said district judge so holding said circuit court had power to make the same, from the date of the adoption thereof until after the rendition of said original judgment in said motion mentioned.

And the original writ of summons issued in said cause and the returns thereon were also read in evidence on the part of said Harris on the trial of said motion; which said writ and the returns endorsed thereon are in the words and figures following, to wit:

UNITED STATES,
District of Mississippi, ss.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you without delay to summon Cotesworth P. Smith,

Henry A. Moore, and William Hardeman, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Benjamin D. Harris, a citizen of the State of Alabama, of a plea of trespass on the case to his damage five thousand dollars, and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the first day of March, A. D. 1839, and of the independence of the United States the 63d.

[L. S.]

WM. BURNS, *Clerk.*

Marshal's return.

Executed on the defendant, Hardeman, by leaving a true copy at his residence.

W. M. GWIN, *Marshal,*
Per deputy W. B. NORMENT.

Executed personally on C. P. Smith, and gave a copy, April 9th, 1839.

Executed on H. A. Moore, by leaving a copy on the table at his residence, his wife nor no white person at home, April 9th, 1839.

WM. M. GWIN, *Marshal,*
R. H. BELL, *Deputy.*

Which said evidence, together with the said record, process, proceedings, returns, &c., of which said transcript is a copy, was all the evidence introduced on the trial of said motion.

And thereupon, at the said May term, A. D. 1851, of said circuit court, and on the 12th day of May, A. D. 1851, the court, after hearing the counsel for both parties, sustained the said motion, and entered judgment thereon in these words, to wit:

And afterwards, to wit, at the said May term of the court first aforesaid, to wit, on the twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-one, until which time this motion was legally continued, came as well the defendants, by their attorneys, Miles & Yerger, as the said plaintiff, by his attorneys, Anderson, Yerger & Potter; and thereupon the said motion being fully argued and heard, and now understood by the court, it is ordered by the court that the said motion be sustained, the forthcoming bond quashed, and the *and the* original judgment herein set aside.

To which decision and judgment of the court, in sustaining said motion and awarding said judgment thereon, the said Benjamin D. Harris, by his attorney, then and there immediately excepted, and tendered this his bill of exceptions, and prayed that the same might be

signed, sealed, and made a part of the record; all which is accordingly, at the term aforesaid.

P. V. DANIEL, [L. S.]
S. J. GHOLSON. [L. S.]

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Circuit court, United States.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing seventeen pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record and on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the [L. S.] seal of said court, at Jackson, this 12th day of August, A. D. 1851, and of the independence of the United States the 76th.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a motion which is in the said circuit court, before you, or some of you, between William Hardeman, Henry R. W. Hill, Cotesworth P. Smith, and Henry A. Moore, plaintiffs, and Benjamin D. Harris, defendant, in said motion a manifest error hath happened, to the great damage of the said Benjamin D. Harris, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of [L. S.] our Lord one thousand eight hundred and fifty, and of the independence of the United States the 75th.

Issued May 14, A. D. 1851.

W. H. BROWN,
Clerk circuit court U. S., southern dist., Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct.

Know all men by these presents, that we, Benjamin D. Harris, and Fielding Davis, and John L. Harris, are held and firmly bound unto William Hardeman, Henry R. W. Hill, Cotesworth P. Smith, and Henry A. Moore, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said Hardeman, Hill, Smith, and Moore, their lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twelfth day of May, A. D. one thousand eight hundred and fifty-one.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1851, judgment was rendered by said court in favor of the said Hardeman, Hill, Smith, and Moore, against the said Benjamin D. Harris; which said judgment was rendered on the 12th day of May, 1851, sustaining a motion to quash a forthcoming bond executed by said Hardeman and Hill, and to set aside a judgment *a judgment* rendered the 16th June, 1839, for $3,642 26 and costs, in favor of said Harris, against said Hardeman, Smith, and Moore, in said court, and in which suit said bond was given; and the said Benjamin D. Harris has sued out a writ of error, from the Supreme Court of the United States, to reverse said judgment.

Now, if the said Benjamin D. Harris shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy all costs, and all such damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if he, the said Harris, shall fail to make his plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

BENJAMIN D. HARRIS, [L. S.]
By his att'y in fact, JOHN L HARRIS,
JOHN L. HARRIS, [L. S.]
FIELDING DAVIS. [L. S.]

Sealed and delivered, in presence of—

Bond approved by me, May 12, 1851.

P. V DANIEL.

UNITED STATES OF AMERICA, *ss.*

To William Hardeman, Henry R. W. Hill, Cotesworth P. Smith, and Henry A. Moore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Mon-

day in December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein Benjamin D. Harris is plaintiff, and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States, for the southern district of Mississippi, this fourteenth day of May, in the year of our Lord one thousand eight hundred and fifty-one, and in the 75th year of the independence of the United States.

S. J. GHOLSON.

Executed on William Hardeman, 15th October, 1851.

F. DAVIS, *Marshal*,
By R. FLETCHER, *Deputy*.

Executed on C. P. Smith, 6th November, 1851.
H. R. W. Hill not found in my district.

FIELDING DAVIS, *Marshal*,
By R. FLETCHER, *Deputy*.

Service,	$4 00
Mileage,	10 00
	$14 00

Henry A. Moore not found in my district.

F. DAVIS, *Marshal*,
By R. FLETCHER, *Deputy*.